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Conseco Life Insurance Company

16 CEDRIC BRADY, DR. CHARLES) CASE NO.: 3:08-CV-05746-SI
HOVDEN, MARION HOVDEN, DR.)
17 EUGENE KREPS, DR. JOHN McNAMARA,)
DR. HISAJI SAKAI, and JEAN SAKAI,)
18 Individually and On Behalf Of All Others)
Similarly Situated,)
19 Plaintiffs,)
20 v.)
21 CONSECO, INC. and CONSECO LIFE) Amended Complaint filed: April 23, 200
INSURANCE COMPANY,)
22 Defendants.)

1 Defendant Conseco Life Insurance Company ("Conseco Life"), by its undersigned
 2 counsel, answers the Amended Complaint, upon knowledge as to itself and its own acts, and
 3 otherwise upon information and belief, as follows:

4 **ANSWER**

5 To the extent the paragraphs of the Amended Complaint are grouped under headings
 6 and sub-headings, Conseco Life responds generally that such headings and sub-headings (which
 7 are not repeated below) contain legal conclusions as to which no response is required. To the
 8 extent a response is deemed necessary, Conseco Life denies each and every heading and sub-
 9 heading in the Amended Complaint and incorporates by reference the response in each paragraph
 10 below as if fully set forth therein.

12 The introductory paragraph of the Amended Complaint that precedes the Amended
 13 Complaint's numbered paragraphs contains legal conclusions as to which no response is required.
 14 To the extent a response is deemed necessary, Conseco Life denies each and every allegation
 15 contained in the introductory paragraph of the Amended Complaint, including, but not limited to,
 16 the Amended Complaint's definition of the term "Conseco."

18 1. Conseco Life denies the allegations in the first sentence of Paragraph 1,
 19 except admits that it markets certain insurance products. Conseco Life denies the allegations in the
 20 second sentence of Paragraph 1, except admits that under certain circumstances certain whole life
 21 insurance policies can provide a death benefit, accumulate a cash value and allow for loans.

23 2. Conseco Life denies the allegations in the first sentence of Paragraph 2,
 24 except admits that the Plaintiffs¹ purchased life insurance policies from Massachusetts General
 25 Insurance Company. Conseco Life lacks knowledge or information sufficient to form a belief as to
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27 1 Cedric Brady, Dr. Charles Hovden, Marion Hovden, Dr. Eugene Kreps, Dr. John
 28 McNamara, Dr. Hisaji Sakai and Jean Sakai are herein referred to as "Plaintiffs."

1 the truth of the allegations in the second sentence of Paragraph 2 and on that basis denies those
2 allegations.

3 3. Conseco Life denies the allegations in the first sentence of Paragraph 3.
4 Conseco Life denies the allegations in the second sentence of Paragraph 3, except admits that
5 Plaintiffs have been sent annual statements, and refers to the Plaintiffs' annual statements for a
6 complete and accurate statement of their terms.

7 4. Conseco Life denies the allegations in the first sentence of Paragraph 4.
8 Conseco Life denies the allegations in the second sentence of Paragraph 4, except admits that
9 the computer-based administrative system tracking Plaintiffs' policies did not automatically flag
10 and generate a letter when the amount remaining in their policies' accumulation accounts did not
11 exceed the sum of the then-guaranteed cash value, the then-applicable surrender charge, and any
12 indebtedness. Conseco Life denies the allegations in the third sentence of Paragraph 4, which is
13 unintelligible. Conseco Life denies the allegations in the fourth sentence of Paragraph 4, except
14 admits that Plaintiffs have been sent annual statements, and refers to the Plaintiffs' annual
15 statements for a complete and accurate statement of their terms. Conseco Life denies the
16 allegations in the fifth sentence of Paragraph 4.

17 5. Conseco Life denies the allegations in Paragraph 5, and refers to the letters
18 from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and accurate statement of
19 their terms.

20 6. Conseco Life denies the allegations in Paragraph 6.

21 7. Conseco Life denies the allegations in Paragraph 7, and -- to the extent these
22 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate
23 statement of their terms.

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1 8. Conseco Life denies the allegations in the first sentence of Paragraph 8, and
 2 refers to the letters from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and
 3 accurate statement of their terms. Conseco Life denies the allegations in the second sentence of
 4 Paragraph 8.

5 9. Conseco Life denies the allegations in the first sentence of Paragraph 9.
 6 Conseco Life denies the allegations in the second sentence of Paragraph 9, and refers to the Court
 7 filings in *Rosenbaum v. Philadelphia Life, et al.*, 2:93-cv-00834 for a complete and accurate
 8 statement of their terms. Conseco Life denies the allegations in the third and fourth sentences of
 9 Paragraph 9, and refers to the Final Judgment of Class Action in *In Re Conseco Life Ins. Cost Of*
 10 *Insurance Litigation*, MDL No. 04-1610 AHM (MCX), reported at 2007 WL 3170134 (C.D. Cal.
 11 July 3, 2007), and all the other Court filings in that action for a complete and accurate statement of
 12 their terms.

13 10. Conseco Life denies the allegations in the first sentence of Paragraph 10.
 14 Conseco Life admits the allegations in the second sentence of Paragraph 10. Conseco Life denies
 15 the allegations in the third sentence of Paragraph 10, and refers to Exhibit A to the Amended
 16 Complaint, for a complete and accurate statement of its terms.

17 11. Conseco Life admits the allegations in the first sentence of Paragraph 11.
 18 Conseco Life denies the allegations in the second sentence of Paragraph 11, and refers to Exhibit B
 19 to the Amended Complaint, for a complete and accurate statement of its terms.

20 12. Conseco Life denies the allegations in Paragraph 12.

21 13. Conseco Life avers that Paragraph 13 contains legal conclusions to which no
 22 response is required. To the extent that Paragraph 13 is deemed to contain factual allegations, they
 23 are denied.

1 14. Conseco Life lacks knowledge or information sufficient to form a belief as
 2 to the truth of the allegations in the first sentence of Paragraph 14 and on that basis denies those
 3 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 14, except
 4 admits and avers that Lifetrend IV, Series 1987 Policy Number 10PM005886, dated December 15,
 5 1987, was issued in the face amount of \$420,676 for insured Cedric T. Brady. Conseco Life lacks
 6 knowledge or information sufficient to form a belief as to the truth of the allegations in the third
 7 sentence of Paragraph 14 and on that basis denies those allegations. Further answering, Conseco
 8 Life avers that Mr. Brady listed his birth date as September 8, 1942 on his application for life
 9 insurance.

11 15. Conseco Life lacks knowledge or information sufficient to form a belief as
 12 to the truth of the allegations in the first sentence of Paragraph 15 and on that basis denies those
 13 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 15, except
 14 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L0992610, dated December 1,
 15 1988, was issued in the face amount of \$500,000 for insured Charles N. Hovden. Conseco Life
 16 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the
 17 third sentence of Paragraph 15 and on that basis denies those allegations. Further answering,
 18 Conseco Life avers that Dr. Hovden listed his birth date as September 2, 1925 on his application
 19 for life insurance.

22 16. Conseco Life lacks knowledge or information sufficient to form a belief as
 23 to the truth of the allegations in the first sentence of Paragraph 16 and on that basis denies those
 24 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 16, except
 25 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L1000650, dated February 15,
 26 1989, was issued in the face amount of \$500,000 for insured Marion M. Hovden. Conseco Life
 27 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the

1 third sentence of Paragraph 16 and on that basis denies those allegations. Further answering,
 2 Conseco Life avers that Ms. Hovden listed her birth date as July 19, 1927 on her application for life
 3 insurance.

4 17. Conseco Life lacks knowledge or information sufficient to form a belief as
 5 to the truth of the allegations in the first sentence of Paragraph 17 and on that basis denies those
 6 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 17, except
 7 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L0926910, dated October 1,
 8 1987, was issued in the face amount of \$1,000,000 for insured Eugene Kreps. Conseco Life lacks
 9 knowledge or information sufficient to form a belief as to the truth of the allegations in the third
 10 sentence of Paragraph 17 and on that basis denies those allegations. Further answering, Conseco
 11 Life avers that Dr. Kreps listed his birth date as October 14, 1931 on his application for life
 12 insurance.

13 18. Conseco Life lacks knowledge or information sufficient to form a belief as
 14 to the truth of the allegations in the first sentence of Paragraph 18 and on that basis denies those
 15 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 18, except
 16 admits and avers that Lifetrend IV, Series 1987 Policy Number 1090009718, dated November 6,
 17 1991, was issued in the face amount of \$1,512,359 for insured John McNamara. Conseco Life
 18 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the
 19 third sentence of Paragraph 18 and on that basis denies those allegations. Further answering,
 20 Conseco Life avers that Dr. McNamara listed his birth date as April 6, 1950 on his application for
 21 life insurance.

22 19. Conseco Life lacks knowledge or information sufficient to form a belief as
 23 to the truth of the allegations in the first sentence of Paragraph 19 and on that basis denies those
 24 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 19, except

1 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L1002680, dated June 13, 1989,
 2 was issued in the face amount of \$75,000 for insured Hisaji Sakai. Conseco Life lacks knowledge
 3 or information sufficient to form a belief as to the truth of the allegations in the third sentence of
 4 Paragraph 19 and on that basis denies those allegations. Further answering, Conseco Life avers
 5 that Dr. Sakai listed his birth date as February 28, 1925 on his application for life insurance.
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7 20. Conseco Life lacks knowledge or information sufficient to form a belief as
 8 to the truth of the allegations in the first sentence of Paragraph 20 and on that basis denies those
 9 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 20, except
 10 admits and avers that Lifetrend IV, Series 1987 Policy Number 10L1011140, dated June 14, 1989,
 11 was issued in the face amount of \$150,000 for insured Jean Sakai. Conseco Life lacks knowledge
 12 or information sufficient to form a belief as to the truth of the allegations in the third sentence of
 13 Paragraph 20 and on that basis denies those allegations. Further answering, Conseco Life avers
 14 that Ms. Sakai listed her birth date as January 8, 1925 on her application for life insurance.
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16 21. The allegations in Paragraph 21 relate solely to Conseco, Inc. Pursuant to
 17 Order of this Court dated July 29, 2009, Conseco, Inc. was dismissed from this action and therefore
 18 no response is required. To the extent that an answer is deemed required, it is denied.
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20 22. Conseco Life denies the allegations in the first sentence of Paragraph 22,
 21 except admits and avers that it is a corporation organized under the laws of Indiana, with its
 22 headquarters and principal place of business in Indiana, and that it is registered to do business in,
 23 and does business in, California, among other states. Conseco Life denies the allegations in the
 24 second sentence of Paragraph 22, except admits that on December 31, 1998, Philadelphia Life
 25 Insurance Company merged with Conseco Life. Conseco Life denies the allegations in the third
 26 sentence of Paragraph 22. Conseco Life denies the allegations in the fourth sentence of Paragraph
 27 22, except admits that Massachusetts General issued Plaintiffs' policies.
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1 23. Conseco Life avers that the first sentence of Paragraph 23 contains legal
2 conclusions to which no response is required. To the extent that the first sentence of Paragraph 23
3 is deemed to contain factual allegations, they are denied. The allegations in the second sentence of
4 Paragraph 23 relate solely to Conseco, Inc. Pursuant to Order of this Court dated July 29, 2009,
5 Conseco, Inc. was dismissed from this action and therefore no response is required. Conseco Life
6 admits the allegations in the third sentence of Paragraph 23. Conseco Life lacks knowledge or
7 information sufficient to form a belief as to the truth of the allegations in the fourth sentence of
8 Paragraph 23 and on that basis denies those allegations. Further answering, Conseco Life avers
9 that the fourth sentence of Paragraph 23 contains legal conclusions to which no response is
10 required. To the extent that the fourth sentence of Paragraph 23 is deemed to contain factual
11 allegations, they are denied.
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13 24. Conseco Life avers that Paragraph 24 contains legal conclusions to which no
14 response is required. To the extent that Paragraph 24 is deemed to contain factual allegations, they
15 are denied.

16 25. Conseco Life avers that the first sentence of Paragraph 25 contains legal
17 conclusions to which no response is required. To the extent that the first sentence of Paragraph 25
18 is deemed to contain factual allegations, they are denied. Conseco Life lacks knowledge or
19 information sufficient to form a belief as to the truth of the allegations in the second sentence of
20 Paragraph 25 and on that basis denies those allegations.

21 26. Conseco Life lacks knowledge or information sufficient to form a belief as
22 to the truth of the allegations in the first sentence of Paragraph 26 and on that basis denies those
23 allegations. Further answering, Conseco Life avers that the first sentence of Paragraph 26 contains
24 legal conclusions to which no response is required. To the extent that the first sentence of
25 Paragraph 26 is deemed to contain factual allegations, they are denied. Conseco Life lacks
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1 knowledge or information sufficient to form a belief as to the truth of the allegations in the second
 2 sentence of Paragraph 26 and on that basis denies those allegations. Conseco Life lacks knowledge
 3 or information sufficient to form a belief as to the truth of the allegations in the third sentence of
 4 Paragraph 26 and on that basis denies those allegations. Conseco Life avers that the fourth
 5 sentence of Paragraph 26 contains legal conclusions to which no response is required. To the
 6 extent that the fourth sentence of Paragraph 26 is deemed to contain factual allegations, they are
 7 denied.

9 27. The allegations in Paragraph 27 relate solely to Plaintiffs' assertion that the
 10 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 11 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 12 deemed required, Conseco Life denies the allegations in Paragraph 27.
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14 28. The allegations in Paragraph 28 relate solely to Plaintiffs' assertion that the
 15 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 16 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 17 deemed required, Conseco Life denies the allegations in Paragraph 28.

18 29. The allegations in Paragraph 29 relate solely to Plaintiffs' assertion that the
 19 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 20 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 21 deemed required, Conseco Life denies the allegations in Paragraph 29.
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23 30. The allegations in Paragraph 30 relate solely to Plaintiffs' assertion that the
 24 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 25 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 26 deemed required, Conseco Life denies the allegations in Paragraph 30.
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1 31. The allegations in Paragraph 31 relate solely to Plaintiffs' assertion that the
2 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
3 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
4 deemed required, Conseco Life denies the allegations in Paragraph 31.

5 32. The allegations in Paragraph 32 relate solely to Plaintiffs' assertion that the
6 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
7 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
8 deemed required, Conseco Life denies the allegations in Paragraph 32.

9 33. The allegations in Paragraph 33 relate solely to Plaintiffs' assertion that the
10 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
11 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
12 deemed required, Conseco Life denies the allegations in Paragraph 33.

13 34. The allegations in Paragraph 34 relate solely to Plaintiffs' assertion that the
14 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
15 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
16 deemed required, Conseco Life denies the allegations in Paragraph 34.

17 35. The allegations in Paragraph 35 relate solely to Plaintiffs' assertion that the
18 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
19 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
20 deemed required, Conseco Life denies the allegations in Paragraph 35.

21 36. The allegations in Paragraph 36, and each of its sub-paragraphs, relate solely
22 to Plaintiffs' assertion that the Court has personal jurisdiction over Conseco, Inc. That assertion
23 was rejected by Order of this Court dated July 29, 2009, and therefore no response is required. To
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1 the extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 36
 2 and each of its sub-paragraphs.

3 37. The allegations in Paragraph 37 relate solely to Plaintiffs' assertion that the
 4 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 5 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 6 deemed required, Conseco Life denies the allegations in Paragraph 37.

7 38. The allegations in Paragraph 38 relate solely to Plaintiffs' assertion that the
 8 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 9 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 10 deemed required, Conseco Life denies the allegations in Paragraph 38.

11 39. The allegations in Paragraph 39 relate solely to Plaintiffs' assertion that the
 12 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 13 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 14 deemed required, Conseco Life denies the allegations in Paragraph 39.

15 40. The allegations in Paragraph 40 relate solely to Plaintiffs' assertion that the
 16 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 17 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 18 deemed required, Conseco Life denies the allegations in Paragraph 40.

19 41. The allegations in Paragraph 41 relate solely to Plaintiffs' assertion that the
 20 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 21 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 22 deemed required, Conseco Life denies the allegations in Paragraph 41.

23 42. The allegations in Paragraph 42 relate solely to Plaintiffs' assertion that the
 24 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
 25 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
 26 deemed required, Conseco Life denies the allegations in Paragraph 42.

1 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
2 deemed required, Conseco Life denies the allegations in Paragraph 42.

3 43. The allegations in Paragraph 43 relate solely to Plaintiffs' assertion that the
4 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
5 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
6 deemed required, Conseco Life denies the allegations in Paragraph 43.

7 44. The allegations in Paragraph 44 relate solely to Plaintiffs' assertion that the
8 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
9 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
10 deemed required, Conseco Life denies the allegations in Paragraph 44.

11 45. The allegations in Paragraph 45 relate solely to Plaintiffs' assertion that the
12 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
13 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
14 deemed required, Conseco Life denies the allegations in Paragraph 45.

15 46. The allegations in Paragraph 46 relate solely to Plaintiffs' assertion that the
16 Court has personal jurisdiction over Conseco, Inc. That assertion was rejected by Order of this
17 Court dated July 29, 2009, and therefore no response is required. To the extent that an answer is
18 deemed required, Conseco Life denies the allegations in Paragraph 46.

19 47. Conseco Life denies the allegations in the first sentence of Paragraph 47.
20 Conseco Life lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations in the second sentence of Paragraph 47 and on that basis denies those allegations.
22 Conseco Life denies the allegations in the third sentence of Paragraph 47.

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1 48. Conseco Life denies the allegations in the first sentence of Paragraph 48,
 2 except admits that it sells policies through independent brokers. Conseco Life denies the
 3 allegations in the second sentence of Paragraph 48.

4 49. Conseco Life denies the allegations in Paragraph 49, and -- to the extent
 5 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 6 accurate statement of their terms.

8 50. Conseco Life denies the allegations in Paragraph 50, and -- to the extent
 9 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 10 accurate statement of their terms.

11 51. Conseco Life denies the allegations in Paragraph 51, except admits -- to the
 12 extent these allegations concern the Plaintiffs -- that Plaintiffs owed premiums pursuant to the
 13 terms of their policies.

15 52. Conseco Life denies the allegations in Paragraph 52, and -- to the extent
 16 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 17 accurate statement of their terms.

18 53. Conseco Life denies the allegations in the first, second and third sentences of
 19 Paragraph 53, and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs'
 20 policies for a complete and accurate statement of their terms. Conseco Life denies the allegations
 21 in the fourth sentence of Paragraph 53.

23 54. Conseco Life denies the allegations in the first sentence of Paragraph 54, and
 24 -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a
 25 complete and accurate statement of their terms. Conseco Life denies the allegations in the second
 26 sentence of Paragraph 54, except admits -- to the extent these allegations concern the Plaintiffs --
 27 that the illustrations attached to the October 7, 2008, letter provide a clear explanation of the

1 interest credit. Conseco Life denies the allegations in the third, fourth, fifth and sixth sentences of
 2 Paragraph 54, and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs'
 3 policies for a complete and accurate statement of their terms.

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5 55. Conseco Life denies the allegations in Paragraph 55, and -- to the extent
 6 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 7 accurate statement of their terms.

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9 56. Conseco Life admits the allegations in the first sentence of Paragraph 56,
 10 and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a
 11 complete and accurate statement of their terms. Conseco Life denies the allegations in the second
 12 and third sentences of Paragraph 56, and -- to the extent these allegations concern the Plaintiffs --
 13 refers to the Plaintiffs' policies for a complete and accurate statement of their terms.

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15 57. Conseco Life lacks knowledge or information sufficient to form a belief as
 16 to the truth of the allegations in the first sentence of Paragraph 57 and on that basis denies those
 17 allegations, except admits and avers that annual statements are issued on Plaintiffs' policies.
 18 Conseco Life denies the allegations in the second and third sentences of Paragraph 57, and -- to the
 19 extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual statements for a
 20 complete and accurate statement of their terms.

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22 58. Conseco Life lacks knowledge or information sufficient to form a belief as
 23 to the truth of the allegations in the first sentence of Paragraph 58 and on that basis denies those
 24 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 58.

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26 59. Conseco Life denies the allegations in the first sentence of Paragraph 59, and
 27 -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a
 28 complete and accurate statement of their terms. Conseco Life denies the allegations in the second
 sentence of Paragraph 59, except admits -- to the extent these allegations concern the Plaintiffs --

1 that Plaintiffs' policies contain an "Optional Premium Payment Provision" and refers to the
 2 Plaintiffs' policies for a complete and accurate statement of their terms. Conseco Life denies the
 3 allegations in the third sentence of Paragraph 59, and -- to the extent these allegations concern the
 4 Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate statement of their terms.
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60. Conseco Life denies the allegations in Paragraph 60, and -- to the extent
 6 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 7 accurate statement of their terms.

61. Conseco Life denies the allegations in Paragraph 61, and -- to the extent
 10 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 11 accurate statement of their terms.

62. Conseco Life denies the allegations in Paragraph 62, and -- to the extent
 13 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 14 accurate statement of their terms concerning loans and associated indebtedness.

63. Conseco Life denies the allegations in Paragraph 63, and -- to the extent
 17 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 18 accurate statement of their terms.

64. Conseco Life denies the allegations in the first sentence of Paragraph 64,
 20 except admits -- to the extent these allegations concern the Plaintiffs -- that Plaintiffs' policies
 21 contain an "Optional Premium Payment Provision" and refers to the Plaintiffs' policies for a
 22 complete and accurate statement of their terms. Conseco Life denies the allegations in the second
 23 and third sentences of Paragraph 64, except admits -- to the extent these allegations concern the
 25 Plaintiffs -- that Plaintiffs owed premiums pursuant to the terms of their policies, and refers to the
 26 Plaintiffs' policies for a complete and accurate statement of their terms.
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1 65. Conseco Life denies the allegations in Paragraph 65, and -- to the extent
 2 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 3 accurate statement of their terms.

4 66. Conseco Life denies the allegations Paragraph 66, and -- to the extent these
 5 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate
 6 statement of their terms.

7 67. Conseco Life denies the allegations in Paragraph 67, and -- to the extent
 8 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 9 accurate statement of their terms. Answering further, Conseco Life avers and refers to the October
 10 7, 2008, letter for a complete and accurate statement of the enhanced forfeiture provision's terms.

11 68. Conseco Life denies the allegations Paragraph 68, and -- to the extent these
 12 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate
 13 statement of their terms.

14 69. Conseco Life denies the allegations Paragraph 69, and -- to the extent these
 15 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate
 16 statement of their terms.

17 70. Conseco Life denies the allegations in Paragraph 70, and -- to the extent
 18 these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual statements for a complete
 19 and accurate statement of their terms.

20 71. Conseco Life denies the allegations in Paragraph 71, and -- to the extent
 21 these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual statements for a complete
 22 and accurate statement of their terms.

23 72. Conseco Life denies the allegations in the first sentence of Paragraph 72, and
 24 refers to Mr. Brady's annual statement for the period from April 15, 1993 to April 16, 1994 for a
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1 complete and accurate statement of its terms. Conseco Life denies the allegations in the second
 2 sentence of Paragraph 72, and refers to Mr. Brady's annual statement for the period from December
 3 15, 1994 to December 16, 1995 for a complete and accurate statement of its terms. Conseco Life
 4 denies the allegations in the third sentence of Paragraph 72, and refers to the Mr. Brady's annual
 5 statements for a complete and accurate statement of their terms.
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7 73. Conseco Life denies the allegations in the first sentence of Paragraph 73, and
 8 refers to Dr. Sakai's annual statement for the period from June 13, 1993 to June 14, 1994 for a
 9 complete and accurate statement of its terms. Conseco Life denies the allegations in the second
 10 sentence of Paragraph 73, and refers to Dr. Sakai's annual statement for the period from June 13,
 11 1996 to June 14, 1997 for a complete and accurate statement of its terms. Conseco Life denies the
 12 allegations in the third sentence of Paragraph 73, and refers to the Dr. Sakai's annual statement for
 13 the period from June 13, 2007 to June 14, 2008 for a complete and accurate statement of its terms.
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15 74. Conseco Life denies the allegations in the first sentence of Paragraph 74, and
 16 refers to Ms. Sakai's annual statement for the period from June 14, 1993 to June 15, 1994 for a
 17 complete and accurate statement of its terms. Conseco Life denies the allegations in the second
 18 sentence of Paragraph 74, and refers to Ms. Sakai's annual statement for the period from June 14,
 19 1996 to June 15, 1997 for a complete and accurate statement of its terms. Conseco Life denies the
 20 allegations in the third sentence of Paragraph 74, and refers to Ms. Sakai's annual statement for the
 21 period from June 14, 2007 to June 15, 2008 for a complete and accurate statement of its terms.
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23 75. Conseco Life denies the allegations in Paragraph 75, and refers to Dr.
 24 McNamara's annual statements for a complete and accurate statement of their terms.
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26 76. Conseco Life denies the allegations in Paragraph 76.
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28 77. Conseco Life denies the allegations in Paragraph 77.

1 78. Conseco Life denies the allegations Paragraph 78, and -- to the extent these
 2 allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate
 3 statement of their terms.

4 79. Conseco Life denies the allegation in the first sentence of Paragraph 79.
 5 Conseco Life denies the allegations in the second sentence of Paragraph 79, and refers to Exhibit B
 6 to the Amended Complaint, for a complete and accurate statement of its terms.

7 80. Conseco Life denies the allegations in Paragraph 80.

8 81. Conseco Life denies the allegations in Paragraph 81.

9 82. Conseco Life denies the allegations in Paragraph 82.

10 83. Conseco Life lacks knowledge or information sufficient to form a belief as
 11 to the truth of the allegations in the first and second sentences of Paragraph 83 and on that basis
 12 denies those allegations. Further answering, Conseco Life avers that the third sentence of
 13 Paragraph 83 contains legal conclusions to which no response is required. To the extent that the
 14 third sentence of Paragraph 83 is deemed to contain factual allegations, they are denied

15 84. Conseco Life denies the allegations in Paragraph 84.

16 85. Conseco Life denies the allegations in Paragraph 85.

17 86. Conseco Life denies the allegations in Paragraph 86, and refers to the letters
 18 from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and accurate statement of
 19 their terms.

20 87. Conseco Life denies the allegations in Paragraph 87, and refers to the letters
 21 from Conseco Life to the Plaintiffs dated October 7, 2008, for a complete and accurate statement of
 22 their terms. Conseco Life denies the allegations in subparagraph "a" of Paragraph 87, and refers to
 23 the letter from Conseco Life to Dr. Kreps dated October 7, 2008, and the subsequent, related letters,
 24 for a complete and accurate statement of their terms. Conseco Life denies the allegations in
 25

1 subparagraph "b" of Paragraph 87, and refers to the letter from Conseco Life to Kenneth Hovden
 2 and Caren Hovden, the beneficiaries for Marion Hovden's policy, dated October 7, 2008, and the
 3 subsequent, related letters, for a complete and accurate statement of their terms. Conseco Life
 4 denies the allegations in subparagraph "c" of Paragraph 87, and refers to the letter from Conseco
 5 Life to Kenneth Hovden and Caren Hovden, the beneficiaries for Dr. Charles Hovden's policy,
 6 dated October 7, 2008, and the subsequent, related letters, for a complete and accurate statement of
 7 their terms. Conseco Life denies the allegations in subparagraph "d" of Paragraph 87, and refers to
 8 the letter from Conseco Life to Dr. Sakai dated October 7, 2008, and the subsequent, related letters,
 9 for a complete and accurate statement of their terms. Conseco Life denies the allegations in
 10 subparagraph "e" of Paragraph 87, and refers to the letter from Conseco Life to Ms. Sakai dated
 11 October 7, 2008, and the subsequent, related letters, for a complete and accurate statement of their
 12 terms. Conseco Life denies the allegations in subparagraph "f" of Paragraph 87, and refers to the
 13 letter from Conseco Life to Mr. Brady dated October 7, 2008, and the subsequent, related letters,
 14 for a complete and accurate statement of their terms. Conseco Life denies the allegations in
 15 subparagraph "g" of Paragraph 87, and refers to the letter from Conseco Life to Dr. McNamara
 16 dated October 7, 2008, and the subsequent, related letters, for a complete and accurate statement of
 17 their terms. Conseco Life denies the allegations in subparagraph "h" of Paragraph 87.

20 88. Conseco Life denies the allegations in the first sentence of Paragraph 88.
 21 Conseco Life denies the allegations in the second sentence of Paragraph 88, except admits -- to the
 22 extent these allegations concern the Plaintiffs -- that Plaintiffs' policies contain an "Optional
 23 Premium Payment Provision" and refers to the Plaintiffs' policies for a complete and accurate
 24 statement of their terms. Conseco Life denies the allegations in the third sentence of Paragraph 88,
 25 and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs' annual
 26 statements for a complete and accurate statement of their terms. Conseco Life denies the
 27 statements for a complete and accurate statement of their terms. Conseco Life denies the
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1 allegations in the fourth sentence of Paragraph 88, and -- to the extent these allegations concern the
 2 Plaintiffs -- refers to the Plaintiffs' policies for a complete and accurate statement of their terms.
 3 Conseco Life denies the allegations in the fifth sentence of Paragraph 88.

4 89. Conseco Life denies the allegations in the first sentence of Paragraph 89.
 5 Conseco Life denies the allegations in the second sentence of Paragraph 89, and -- to the extent
 6 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 7 accurate statement of their terms. Conseco Life denies the allegations in the third sentence of
 8 Paragraph 89, and -- to the extent these allegations concern the Plaintiffs -- refers to the Plaintiffs'
 9 policies for a complete and accurate statement of their terms.

10 90. Conseco Life denies the allegations in the first sentence of Paragraph 90.
 11 Conseco Life avers that the second, third and fourth sentences of Paragraph 90 contains legal
 12 conclusions to which no response is required. To the extent that the second, third and fourth
 13 sentences of Paragraph 90 are deemed to contain factual allegations, they are denied.

14 91. Conseco Life denies the allegations in Paragraph 91, and -- to the extent
 15 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 16 accurate statement of their terms.

17 92. Conseco Life denies the allegations in the first sentence of Paragraph 92,
 18 except admits -- to the extent these allegations concern the Plaintiffs -- that Plaintiffs' policies
 19 contain an "Optional Premium Payment Provision" and refers to the Plaintiffs' policies for a
 20 complete and accurate statement of their terms. Conseco Life denies the allegations in the second
 21 sentence of Paragraph 92, and -- to the extent these allegations concern the Plaintiffs -- refers to the
 22 Plaintiffs' policies for a complete and accurate statement of their terms.

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1 93. Conseco Life lacks knowledge or information sufficient to form a belief as
 2 to the truth of the allegations in the first and second sentences of Paragraph 93 and on that basis
 3 denies those allegations. Conseco Life denies the allegations in the third sentence of Paragraph 93.
 4

5 94. Conseco Life denies the allegations Paragraph 94.

6 95. Conseco Life denies the allegations Paragraph 95.

7 96. Conseco Life denies the allegations in the first sentence of Paragraph 96.
 8 Conseco Life denies the allegations in the second sentence of Paragraph 96, and -- to the extent
 9 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 10 accurate statement of their terms.

11 97. Conseco Life denies the allegations in Paragraph 97, and -- to the extent
 12 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 13 accurate statement of their terms.

15 98. Conseco Life denies the allegations in Paragraph 98, including in
 16 subparagraphs "a" through "g" and refers to the letters from Conseco Life to the Plaintiffs dated
 17 October 7, 2008, for a complete and accurate statement of their terms. Conseco Life denies the
 18 allegations in subparagraph "h" of Paragraph 98.

19 99. Conseco Life denies the allegations in Paragraph 99, and -- to the extent
 20 these allegations concern the Plaintiffs -- refers to the letters from Conseco Life to the Plaintiffs
 21 dated October 7, 2008, for a complete and accurate statement of their terms.

23 100. Conseco Life denies the allegations in Paragraph 100.

24 101. Conseco Life denies the allegations in the first and second sentences of
 25 Paragraph 101. Conseco Life avers that the third sentence of Paragraph 101 contains legal
 26 conclusions to which no response is required. To the extent that the third sentence of Paragraph
 27 101 is deemed to contain factual allegations, they are denied.

1 102. Conseco Life denies the allegations in Paragraph 102, and -- to the extent
 2 these allegations concern the Plaintiffs -- refers to the Plaintiffs' policies for a complete and
 3 accurate statement of their terms.

4 103. Conseco Life lacks knowledge or information sufficient to form a belief as
 5 to the truth of the allegations in the first sentence of Paragraph 103 and on that basis denies those
 6 allegations. Conseco Life denies the allegations in the second sentence of Paragraph 103.

7 104. Conseco Life denies the allegations in Paragraph 104.

8 105. Conseco Life avers that Paragraph 105 contains legal conclusions to which
 9 no response is required. To the extent that Paragraph 105 is deemed to contain factual allegations,
 10 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.

11 106. Conseco Life avers that Paragraph 106 contains legal conclusions to which
 12 no response is required. To the extent that Paragraph 106 is deemed to contain factual allegations,
 13 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.

14 107. Conseco Life avers that Paragraph 107 contains legal conclusions to which
 15 no response is required. To the extent that Paragraph 107 is deemed to contain factual allegations,
 16 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.

17 108. Conseco Life avers that Paragraph 108 contains legal conclusions to which
 18 no response is required. To the extent that Paragraph 108 is deemed to contain factual allegations,
 19 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.

20 109. Conseco Life avers that Paragraph 109 contains legal conclusions to which
 21 no response is required. To the extent that Paragraph 109 is deemed to contain factual allegations,
 22 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.

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1 110. Conseco Life avers that Paragraph 110 contains legal conclusions to which
 2 no response is required. To the extent that Paragraph 110 is deemed to contain factual allegations,
 3 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
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5 111. Conseco Life avers that Paragraph 111 contains legal conclusions to which
 6 no response is required. To the extent that Paragraph 111 is deemed to contain factual allegations,
 7 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
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9 112. Conseco Life avers that Paragraph 112 contains legal conclusions to which
 10 no response is required. To the extent that Paragraph 112 is deemed to contain factual allegations,
 11 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
 12

13 113. Conseco Life avers that Paragraph 113 contains legal conclusions to which
 14 no response is required. To the extent that Paragraph 113 is deemed to contain factual allegations,
 15 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
 16

17 114. Conseco Life avers that Paragraph 114 contains legal conclusions to which
 18 no response is required. To the extent that Paragraph 114 is deemed to contain factual allegations,
 19 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
 20

21 115. Conseco Life avers that Paragraph 115 contains legal conclusions to which
 22 no response is required. To the extent that Paragraph 115 is deemed to contain factual allegations,
 23 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
 24

25 116. Conseco Life avers that Paragraph 116 contains legal conclusions to which
 26 no response is required. To the extent that Paragraph 116 is deemed to contain factual allegations,
 27 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
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1 118. Conseco Life avers that Paragraph 118 contains legal conclusions to which
 2 no response is required. To the extent that Paragraph 118 is deemed to contain factual allegations,
 3 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
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5 119. Conseco Life avers that Paragraph 119 contains legal conclusions to which
 6 no response is required. To the extent that Paragraph 119 is deemed to contain factual allegations,
 7 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
 8

9 120. Conseco Life avers that Paragraph 120 contains legal conclusions to which
 10 no response is required. To the extent that Paragraph 120 is deemed to contain factual allegations,
 11 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
 12

13 121. Conseco Life avers that Paragraph 121 contains legal conclusions to which
 14 no response is required. To the extent that Paragraph 121 is deemed to contain factual allegations,
 15 they are denied, and Conseco Life avers that certification of a class is not appropriate in this matter.
 16

17 122. Conseco Life avers that Paragraph 122 contains legal conclusions to which
 18 no response is required. To the extent that Paragraph 122 is deemed to contain factual allegations,
 19 they are denied.
 20

21 123. Conseco Life incorporates its answers and averments in the paragraphs
 22 above as if fully set forth herein.
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24 124. Conseco Life avers that Paragraph 124 contains legal conclusions as to
 25 which no response is required. To the extent that Paragraph 124 is deemed to contain factual
 26 allegations, they are denied.
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28 125. Conseco Life avers that Paragraph 125 contains legal conclusions as to
 29 which no response is required. To the extent that Paragraph 125 is deemed to contain factual
 30 allegations, they are denied.
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1 126. Conseco Life avers that Paragraph 126 contains legal conclusions as to
2 which no response is required. To the extent that Paragraph 126 is deemed to contain factual
3 allegations, they are denied.

4 127. Conseco Life avers that Paragraph 127, and each of its subparagraphs,
5 contains legal conclusions as to which no response is required. To the extent that Paragraph 127 is
6 deemed to contain factual allegations, they are denied.

7 128. Conseco Life avers that Paragraph 128 contains legal conclusions as to
8 which no response is required. To the extent that Paragraph 128 is deemed to contain factual
9 allegations, they are denied.

10 11 Conseco Life avers that the "WHEREFORE" clause between Paragraphs 128 and
12 129 contains legal conclusions as to which no response is required. To the extent that the
13 "WHEREFORE" clause between Paragraphs 128 and 129 is deemed to contain factual allegations,
14 they are denied.

15 16 129. Conseco Life incorporates its answers and averments in the paragraphs
17 above as if fully set forth herein.

18 19 130. Conseco Life avers that Paragraph 130 contains legal conclusions as to
20 which no response is required. To the extent that Paragraph 130 is deemed to contain factual
21 allegations, they are denied.

22 23 131. Conseco Life avers that Paragraph 131 contains legal conclusions as to
24 which no response is required. To the extent that Paragraph 131 is deemed to contain factual
25 allegations, they are denied.

26 27 132. Conseco Life avers that Paragraph 132 contains legal conclusions as to
28 which no response is required. To the extent that Paragraph 132 is deemed to contain factual
allegations, they are denied.

1 133. Conseco Life avers that Paragraph 133 contains legal conclusions as to
 2 which no response is required. To the extent that Paragraph 133 is deemed to contain factual
 3 allegations, they are denied.

4 Conseco Life avers that the "WHEREFORE" clause between Paragraphs 133 and
 5 134 contains legal conclusions as to which no response is required. To the extent that the
 6 "WHEREFORE" clause between Paragraphs 133 and 134 is deemed to contain factual allegations,
 7 they are denied.

8 134. The allegations in Paragraph 134 relate solely to a cause of action that was
 9 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 10 extent that an answer is deemed required, Conseco Life repeats and realleges its answers to all
 11 preceding and subsequent paragraphs as if fully set forth herein.

12 135. The allegations in Paragraph 135 relate solely to a cause of action that was
 13 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 14 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 135.

15 136. The allegations in Paragraph 136 relate solely to a cause of action that was
 16 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 17 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 136.

18 137. The allegations in Paragraph 137 relate solely to a cause of action that was
 19 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 20 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 137.

21 138. The allegations in Paragraph 138 relate solely to a cause of action that was
 22 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 23 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 138.

1 139. The allegations in Paragraph 139 relate solely to a cause of action that was
 2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 3 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 139.

4 140. The allegations in Paragraph 140 relate solely to a cause of action that was
 5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 6 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 140.

7 141. The allegations in Paragraph 141 relate solely to a cause of action that was
 8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 9 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 141.

10 142. The allegations in Paragraph 142 relate solely to a cause of action that was
 11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 12 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 142.

13 The allegations in the "WHEREFORE" clause between Paragraphs 142 and 143
 14 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and
 15 therefore no response is required. To the extent that an answer is deemed required, Conseco Life
 16 denies the allegations in the "WHEREFORE" clause between Paragraphs 142 and 143.

17 143. The allegations in Paragraph 143 relate solely to a cause of action that was
 18 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 19 extent that an answer is deemed required, Conseco Life repeats and realleges its answers to all
 20 preceding and subsequent paragraphs as if fully set forth herein.

21 144. The allegations in Paragraph 144 relate solely to a cause of action that was
 22 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 23 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 144.

1 145. The allegations in Paragraph 145 relate solely to a cause of action that was
 2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 3 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 145.
 4

5 146. The allegations in Paragraph 146 relate solely to a cause of action that was
 6 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 7 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 146.
 8

9 147. The allegations in Paragraph 147 relate solely to a cause of action that was
 10 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 11 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 147.
 12

13 148. The allegations in Paragraph 148 relate solely to a cause of action that was
 14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 15 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 148.
 16

17 149. The allegations in Paragraph 149 relate solely to a cause of action that was
 18 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 19 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 149.
 20

21 150. The allegations in Paragraph 150 relate solely to a cause of action that was
 22 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 23 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 150.
 24

25 151. The allegations in Paragraph 151 relate solely to a cause of action that was
 26 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 27 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 151.
 28

The allegations in the "WHEREFORE" clause between Paragraphs 151 and 152
 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and

1 therefore no response is required. To the extent that an answer is deemed required, Conseco Life
2 denies the allegations in the "WHEREFORE" clause between Paragraphs 151 and 152.

3 152. The allegations in Paragraph 152 relate solely to a cause of action that was
4 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
5 extent that an answer is deemed required, Conseco Life repeats and realleges its answers to all
6 preceding and subsequent paragraphs as if fully set forth herein.

7 153. The allegations in Paragraph 153 relate solely to a cause of action that was
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
9 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 153.

10 154. The allegations in Paragraph 154 relate solely to a cause of action that was
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
12 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 154.

13 155. The allegations in Paragraph 155 relate solely to a cause of action that was
14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
15 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 155.

16 156. The allegations in Paragraph 156 relate solely to a cause of action that was
17 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
18 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 156.

19 157. The allegations in Paragraph 157 relate solely to a cause of action that was
20 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
21 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 157.

22 158. The allegations in Paragraph 158 relate solely to a cause of action that was
23 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
24 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 158.

1 159. The allegations in Paragraph 159 relate solely to a cause of action that was
 2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 3 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 159.

4 160. The allegations in Paragraph 160 relate solely to a cause of action that was
 5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 6 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 160.

7 The allegations in the "WHEREFORE" clause between Paragraphs 160 and 161
 8 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and
 9 therefore no response is required. To the extent that an answer is deemed required, Conseco Life
 10 denies the allegations in the "WHEREFORE" clause between Paragraphs 160 and 161.

11 161. The allegations in Paragraph 161 relate solely to a cause of action that was
 12 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 13 extent that an answer is deemed required, Conseco Life repeats and realleges its answers to all
 14 preceding and subsequent paragraphs as if fully set forth herein.

15 162. The allegations in Paragraph 162 relate solely to a cause of action that was
 16 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 17 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 162.

18 163. The allegations in Paragraph 163 relate solely to a cause of action that was
 19 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 20 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 163.

21 164. The allegations in Paragraph 164 relate solely to a cause of action that was
 22 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 23 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 164.

1 165. The allegations in Paragraph 165 relate solely to a cause of action that was
 2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 3 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 165.
 4

5 166. The allegations in Paragraph 166 relate solely to a cause of action that was
 6 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 7 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 166.
 8

9 167. The allegations in Paragraph 167 relate solely to a cause of action that was
 10 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 11 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 167.
 12

13 168. The allegations in Paragraph 168 relate solely to a cause of action that was
 14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 15 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 168.
 16

17 169. The allegations in Paragraph 169 relate solely to a cause of action that was
 18 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 19 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 169.
 20

21 The allegations in the "WHEREFORE" clause between Paragraphs 169 and 170
 22 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and
 23 therefore no response is required. To the extent that an answer is deemed required, Conseco Life
 24 denies the allegations in the "WHEREFORE" clause between Paragraphs 169 and 170.
 25

26 170. The allegations in Paragraph 170 relate solely to a cause of action that was
 27 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
 28 extent that an answer is deemed required, Conseco Life repeats and realleges its answers to all
 preceding and subsequent paragraphs as if fully set forth herein.
 29

1 171. The allegations in Paragraph 171 relate solely to a cause of action that was
2 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
3 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 171.

4 172. The allegations in Paragraph 172 relate solely to a cause of action that was
5 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
6 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 172.

7 173. The allegations in Paragraph 173 relate solely to a cause of action that was
8 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
9 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 173.

10 174. The allegations in Paragraph 174 relate solely to a cause of action that was
11 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
12 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 174.

13 175. The allegations in Paragraph 175 relate solely to a cause of action that was
14 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
15 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 175.

16 176. The allegations in Paragraph 176 relate solely to a cause of action that was
17 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
18 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 176.

19 177. The allegations in Paragraph 177 relate solely to a cause of action that was
20 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
21 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 177.

22 178. The allegations in Paragraph 178 relate solely to a cause of action that was
23 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
24 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 178.

1 The allegations in the "WHEREFORE" clause between Paragraphs 178 and 179
2 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and
3 therefore no response is required. To the extent that an answer is deemed required, Conseco Life
4 denies the allegations in the "WHEREFORE" clause between Paragraphs 178 and 179.
5

6 179. Conseco Life incorporates its answers and averments in the paragraphs
7 above as if fully set forth herein.

8 180. Conseco Life avers that Paragraph 180 contains legal conclusions as to
9 which no response is required. To the extent that Paragraph 180 is deemed to contain factual
10 allegations, they are denied.

11 181. Conseco Life avers that Paragraph 181 contains legal conclusions as to
12 which no response is required. To the extent that Paragraph 181 is deemed to contain factual
13 allegations, they are denied.
14

15 182. Conseco Life avers that Paragraph 182 contains legal conclusions as to
16 which no response is required. To the extent that Paragraph 182 is deemed to contain factual
17 allegations, they are denied.

18 183. Conseco Life avers that Paragraph 183 contains legal conclusions as to
19 which no response is required. To the extent that Paragraph 183 is deemed to contain factual
20 allegations, they are denied.
21

22 184. Conseco Life avers that Paragraph 184 contains legal conclusions as to
23 which no response is required. To the extent that Paragraph 184 is deemed to contain factual
24 allegations, they are denied.

25 185. Conseco Life avers that Paragraph 185 contains legal conclusions as to
26 which no response is required. To the extent that Paragraph 185 is deemed to contain factual
27 allegations, they are denied.
28

1 Conseco Life avers that the "WHEREFORE" clause between Paragraphs 185 and
2 186 contains legal conclusions as to which no response is required. To the extent that the
3 "WHEREFORE" clause between Paragraphs 185 and 186 is deemed to contain factual allegations,
4 they are denied.
5

6 186. Conseco Life incorporates its answers and averments in the paragraphs
7 above as if fully set forth herein.

8 187. Conseco Life avers that Paragraph 187 contains legal conclusions as to
9 which no response is required. To the extent that Paragraph 187 is deemed to contain factual
10 allegations, they are denied.

11 188. Conseco Life avers that Paragraph 188 contains legal conclusions as to
12 which no response is required. To the extent that Paragraph 188 is deemed to contain factual
13 allegations, they are denied.
14

15 189. Conseco Life avers that Paragraph 189 contains legal conclusions as to
16 which no response is required. To the extent that Paragraph 189 is deemed to contain factual
17 allegations, they are denied.

18 190. Conseco Life avers that Paragraph 190 contains legal conclusions as to
19 which no response is required. To the extent that Paragraph 190 is deemed to contain factual
20 allegations, they are denied.
21

22 Conseco Life avers that the "WHEREFORE" clause between Paragraphs 190 and
23 191 contains legal conclusions as to which no response is required. To the extent that the
24 "WHEREFORE" clause between Paragraphs 190 and 191 is deemed to contain factual allegations,
25 they are denied.

26 191. The allegations in Paragraph 191 relate solely to a cause of action that was
27 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
28

1 extent that an answer is deemed required, Conseco Life repeats and realleges its answers to all
2 preceding and subsequent paragraphs as if fully set forth herein.

3 192. The allegations in Paragraph 192 relate solely to a cause of action that was
4 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
5 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 192.

6 193. The allegations in Paragraph 193 relate solely to a cause of action that was
7 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
8 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 193.

9 194. The allegations in Paragraph 194 relate solely to a cause of action that was
10 dismissed by order of this Court dated July 29, 2009, and therefore no response is required. To the
11 extent that an answer is deemed required, Conseco Life denies the allegations in Paragraph 194.

12 The allegations in the "WHEREFORE" clause between Paragraphs 194 and 195
13 relate solely to a cause of action that was dismissed by order of this Court dated July 29, 2009, and
14 therefore no response is required. To the extent that an answer is deemed required, Conseco Life
15 denies the allegations in the "WHEREFORE" clause between Paragraphs 194 and 195.

16 195. Conseco Life incorporates its answers and averments in the paragraphs
17 above as if fully set forth herein.

18 196. Conseco Life avers that Paragraph 196 contains legal conclusions as to
19 which no response is required. To the extent that Paragraph 196 is deemed to contain factual
20 allegations, they are denied.

21 197. Conseco Life avers that Paragraph 197 contains legal conclusions as to
22 which no response is required. To the extent that Paragraph 197 is deemed to contain factual
23 allegations, they are denied.

198. Conseco Life avers that Paragraph 198 contains legal conclusions as to which no response is required. To the extent that Paragraph 198 is deemed to contain factual allegations, they are denied.

199. Conseco Life avers that Paragraph 199 contains legal conclusions as to which no response is required. To the extent that Paragraph 199 is deemed to contain factual allegations, they are denied.

Conseco Life avers that the "WHEREFORE" clause between Paragraphs 199 and 200 contains legal conclusions as to which no response is required. To the extent that the "WHEREFORE" clause between Paragraphs 199 and 200 is deemed to contain factual allegations, they are denied.

200. Conseco Life incorporates its answers and averments in the paragraphs above as if fully set forth herein.

201. Conseco Life avers that Paragraph 201 contains legal conclusions as to which no response is required. To the extent that Paragraph 201 is deemed to contain factual allegations, they are denied.

202. Conseco Life avers that Paragraph 202 contains legal conclusions as to which no response is required. To the extent that Paragraph 202 is deemed to contain factual allegations, they are denied.

203. Conseco Life avers that Paragraph 203 contains legal conclusions as to which no response is required. To the extent that Paragraph 203 is deemed to contain factual allegations, they are denied.

204. Conseco Life avers that Paragraph 204 contains legal conclusions as to which no response is required. To the extent that Paragraph 204 is deemed to contain factual allegations, they are denied.

1 Conseco Life avers that the "WHEREFORE" clause between Paragraphs 204 and
 2 205 contains legal conclusions as to which no response is required. To the extent that the
 3 "WHEREFORE" clause between Paragraphs 204 and 205 is deemed to contain factual allegations,
 4 they are denied.
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6 205. Conseco Life incorporates its answers and averments in the paragraphs
 7 above as if fully set forth herein.

8 206. Conseco Life avers that Paragraph 206 contains legal conclusions as to
 9 which no response is required. To the extent that Paragraph 206 is deemed to contain factual
 10 allegations, they are denied.

11 207. Conseco Life avers that Paragraph 207 contains legal conclusions as to
 12 which no response is required. To the extent that Paragraph 207 is deemed to contain factual
 13 allegations, they are denied.
 14

15 208. Conseco Life avers that Paragraph 208 contains legal conclusions as to
 16 which no response is required. To the extent that Paragraph 208 is deemed to contain factual
 17 allegations, they are denied.

18 209. Conseco Life avers that Paragraph 209 contains legal conclusions as to
 19 which no response is required. To the extent that Paragraph 209 is deemed to contain factual
 20 allegations, they are denied.
 21

22 Conseco Life avers that the "WHEREFORE" clause between Paragraphs 209 and
 23 210 contains legal conclusions as to which no response is required. To the extent that the
 24 "WHEREFORE" clause between Paragraphs 209 and 210 is deemed to contain factual allegations,
 25 they are denied.

26 210. Conseco Life incorporates its answers and averments in the paragraphs
 27 above as if fully set forth herein.
 28

1 211. Conseco Life avers that Paragraph 211 contains legal conclusions as to
2 which no response is required. To the extent that Paragraph 211 is deemed to contain factual
3 allegations, they are denied.

4 212. Conseco Life avers that Paragraph 212 contains legal conclusions as to
5 which no response is required. To the extent that Paragraph 212 is deemed to contain factual
6 allegations, they are denied.

7 213. Conseco Life avers that Paragraph 213 contains legal conclusions as to
8 which no response is required. To the extent that Paragraph 213 is deemed to contain factual
9 allegations, they are denied.

10 Conseco Life avers that the "WHEREFORE" clause between Paragraphs 213 and
11 Plaintiffs' "JURY DEMAND" contains legal conclusions as to which no response is required. To
12 the extent that the "WHEREFORE" clause between Paragraphs 213 and Plaintiffs' "JURY
13 DEMAND" is deemed to contain factual allegations, they are denied.

14 Conseco Life avers that the "JURY DEMAND" immediately preceding Plaintiffs'
15 "PRAYER FOR RELIEF" contains legal conclusions to which no response is required. To the
16 extent that the "JURY DEMAND" immediately preceding Plaintiffs' "PRAYER FOR RELIEF" is
17 deemed to contain factual allegations, they are denied.

18 Conseco Life avers that Plaintiffs' "PRAYER FOR RELIEF" and the
19 "WHEREFORE" clause immediately following it, contain legal conclusions as to which no
20 response is required. To the extent that Plaintiffs' "PRAYER FOR RELIEF" and the
21 "WHEREFORE" clause immediately following it are deemed to contain factual allegations, they
22 are denied, and Conseco Life further denies that Plaintiffs are entitled to any relief whatsoever.

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 The Amended Complaint, and each count contained therein, fails to state a
4 cognizable legal claim upon which relief can be granted.
5

6 **SECOND AFFIRMATIVE DEFENSE**

7 The Amended Complaint, and each count contained therein, is barred because of
8 Plaintiffs' failure to mitigate, minimize, or avoid their damages, if any.
9

10 **THIRD AFFIRMATIVE DEFENSE**

11 The Amended Complaint, and each count contained therein, is barred because
12 Plaintiffs' reliance on any alleged misrepresentations was unreasonable because the alleged
13 misrepresentations were contradicted by the express terms of the policies.
14

15 **FOURTH AFFIRMATIVE DEFENSE**

16 Plaintiffs' count for declaratory relief fails to state a claim for relief because
17 Plaintiffs' harm, if any, will be fairly and adequately resolved by the adjudication of Plaintiffs'
18 other counts.
19

20 **FIFTH AFFIRMATIVE DEFENSE**

21 The Amended Complaint, and each count contained therein, is barred by the
22 applicable statutes of limitations.
23

24 **SIXTH AFFIRMATIVE DEFENSE**

25 The Amended Complaint, and each count contained therein, is barred because it is
26 not ripe.
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1 **SEVENTH AFFIRMATIVE DEFENSE**

2 The Amended Complaint, and each count contained therein, is barred because
3 Conseco Life has not breached any duty.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 The Plaintiffs are not entitled to equitable relief because Plaintiffs have not suffered,
6 and will not suffer, irreparable harm and have adequate remedies at law.

7 **NINTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' claims are preempted, in whole or in part, by ERISA.

9 **TENTH AFFIRMATIVE DEFENSE**

10 Plaintiffs' claims are barred, in whole or in part, by their failure to satisfy contractual
11 conditions precedent.

12 **ELEVENTH AFFIRMATIVE DEFENSE**

13 To the extent that Plaintiffs seek exemplary or punitive damages, any such relief
14 would violate statutory limitations on damages, and/or Conseco Life's right to procedural and
15 substantive due process under the Fourteenth Amendment of the United States.

16 **TWELFTH AFFIRMATIVE DEFENSE**

17 The Amended Complaint, and each count contained therein, is barred by the
18 doctrines of estoppel, waiver, consent and laches.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 Plaintiffs' claims are barred, in whole, or in part, by the Statute of Frauds.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 Plaintiffs' claims for violation of the Consumer Protection Statutes of states other
3 than California are barred by reason of Plaintiffs' failure to identify any unlawful act or practice
4 that violates any of those other unidentified state's statutes or regulations.

5 **FIFTEENTH AFFIRMATIVE DEFENSE**

6 The Amended Complaint, and each count contained therein, is barred on the
7 grounds of primary jurisdiction, filed rate doctrine, and/or regulatory approval.

8 **SIXTEENTH AFFIRMATIVE DEFENSE**

9 Conseco Life reserves the right to amend this answer to assert other affirmative
10 defenses, as appropriate, as this matter proceeds, and in light of discovery obtained.

11 WHEREFORE, Conseco Life respectfully requests judgment granting the following
12 relief:

- 13 (a) dismissing the Amended Complaint against Conseco Life with prejudice;
14 (b) awarding Conseco Life the costs of defending this action, including attorneys' fees,
15 (c) granting Conseco Life such other and further relief as this Court may deem just and
16 necessary.
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1 Dated: August 19, 2009

Respectfully submitted,

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/s/ Raoul D. Kennedy

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